

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 2001-634

December 21, 2001

NORTHERN UTILITIES, INC.
Request for Approval of Amended
Transportation Capacity Contract With
Affiliate Granite State Gas Transmission
(§ 707)

ORDER

WELCH, Chairman, NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve Northern Utilities, Inc.'s (Northern) proposed second amendment to its capacity agreement with its affiliate, Granite State Gas Transmission Company (Granite).

II. PROCEDURAL HISTORY

On September 13, 2001, Northern Utilities, Inc. (Northern) filed a petition for approval of a second amendment to a gas transportation contract with its interstate pipeline affiliate, Granite State Gas Transmission Company (Granite). The first amended contract, which took effect last year by operation of law on or about September 17, 2000, consolidated three previously existing transportation contracts between Northern and Granite and increased the total contractual maximum daily quantity from 28,768 dekatherms/day to 66,000 dekatherms/day. See *Northern Utilities, Inc., Request for Approval of Amended Transportation Capacity Contract with Affiliate Granite State Gas Transmission Company*, Docket No. 2000-619.

The second amendment, now proposed for approval, expands the amount of firm year-round capacity that Northern will purchase from Granite by an additional 18,000 Mcf. The filing contains copies of the existing contracts, the contract amendment, and the supporting testimony of Francisco DaFonte, Director of Gas Control for Bay State Gas Company (Bay State) and Northern. Northern states that the additional capacity is needed to transport supplies obtained by Northern instead of the proposed Wells LNG facility supply. See *Northern Utilities, Inc., Investigation of Decision to Terminate Agreement With Affiliate, Granite State Gas Transmission Company for LNG Services*, Docket No. 99-259, Order (Dec. 3, 1999). Northern requested approval of this

amendment on less than the initial 60-day time period allowed by statute, to allow it to take effect by November 1, 2001.¹

A Notice of Proceeding was issued on October 4, 2001. A petition to intervene was filed by the Office of the Public Advocate (OPA). The Staff and OPA conducted discovery on Company. A technical conference was held on October 25, 2001 at which OPA and Staff explored issues relating to this matter with Northern witnesses, Francisco DaFonte and Joseph Ferro.

On November 6, 2001, the Commission suspended the effective date of the contract for an additional 60 days to allow further time to complete its review.

III. LEGAL STANDARD

The Commission must review any contract or arrangement between affiliates pursuant to 35-A M.R.S.A. § 707 before the arrangement may take effect. The Commission must find that the transaction is not adverse to the public interest and give the contract or arrangement written approval. *Id.*

IV. ANALYSIS

The contract amendment before us would increase Northern's capacity on Granite State by 18,000 MMBtu per day, from 66,000 MMBtu to 84,000 MMBTU. In 1999 when Northern decided to abandon its plans to construct an LNG storage facility in Wells Maine, it entered into contracts for peaking supplies with Distrigas of Massachusetts (DOMAC) and Duke Energy Trading and Marketing (DETM). Under those contracts, Northern's contractual commitment for peak period gas supplies rose by 18,000 MMBtu effective November 1, 2001. Northern asserts that it needs an additional 18,000 MMBtu of transportation capacity on Granite in order to deliver these new sources to its customers.

The transportation contract before us raises two questions. First, does Northern need the additional peaking gas supplies upon which it justifies this capacity addition? Next, if so, is increasing its capacity on the Granite pipeline a reasonable way to obtain that capacity?

¹ November 1, 2001 is the proposed effective date of the Agreement, matching the date on which additional gas supplies have been contracted to be available. Northern indicated at the technical conference that it was unlikely that this additional supply or capacity would actually be needed before at least mid-December, or prior to the coldest winter weather. Because Northern's current demand level remains low due to the unseasonably warm weather that the region has enjoyed this month, the timing of this decision should not create any supply hardship for Northern or its customers.

A. Northern's Capacity And Supply Needs

In order to maintain reliable service, Northern uses the concept of a "design day" forecast. Conceptually, this is a forecast of the peak day level of usage assuming the most severe weather that is expect to occur once in 25 years. In this case, Northern states that its forecast design day requirements are 124,000 MMBtu, including usage of both commodity and transportation customers. Northern estimates that it will meet this supply need as follows:

Upstream pipeline supplies transported on GSGT	84,000	MMBtu/day
LNG and propane injections	18,000	

Total Northern Gas Supply Needs	102,000	
Transport Customers	22,000	

Total	124,000	MMBtu/day

See ADV-1-12.

It is at least possible that this level of capacity is too high. Last year, Northern estimated its design day to be 119,000 MMBtu, but the peak send-out, including transportation customers, was only about 86,000 MMBtu. In fact, over the past five years, the highest peak send out was 100,632 MMBtu in January 2000. Furthermore, there has been only one other winter period in the last five, the 1998-99 season, when the peak send-out exceeded 90,000 MMBtu, which had a peak of 90,148 MMBtu.

Conceptually, Northern forecasts its design day needs by forecasting customers' overall gas needs and then calculating the peak daily use assuming an extremely cold day. The Commission has been engaged in an ongoing review of Northern's forecasting practices in recent CGF cases. As we noted in our October 29, 2001 order in the most recent CGA case, Docket No. 2001-572, Northern has shown a tendency to over-forecast its firm sales. To the extent this is true, the design day forecast will reflect the same error. Furthermore, it appears to be very unlikely that Northern will actually witness weather as cold as design criteria. Northern bases its design day forecast on an assumption of 81 effective degree-days.² In the past five years (the only years for which Northern initially supplied data), the most extreme day in Maine was 71 degree-days in January 2000. In its exceptions to the Examiner's Report, Northern provided a late filed exhibit showing the 20 coldest days since the late 1960's.

² Degree-days for a given day are calculated as 65 degrees minus the average temperature for the day. For example, if the average temperature for a given day were 5 degrees, that day would have 60 degree-days. Effective degree-days are similar to degree-days but also take into account wind speed.

Northern exceeded the 81 design degree day criteria once, in 1980, when it saw 84 degree days. However, the exhibit also appears to indicate a trend toward milder weather. Of the 20 coldest days since 1967, 16 occurred between 1967 and 1982. Only 4 occurred between 1983 and 2001.

Forecasting is hardly an exact science. We cannot reasonably conclude that there is no chance whatever that Northern's peak usage could climb to the level it states. On the other hand, the evidence that the Company presents suggests that its forecast of peak day requirements is potentially too high to be reasonable. To completely resolve this matter, however, we would have to conduct a much more extensive gas supply portfolio design review.

B. Is the Granite Contract a Reasonable Choice?

If we accept, at least for the moment, Northern's assertion that it needs an additional 18,000 MMBtus of pipeline capacity for its winter portfolio, the next question is whether the decision to purchase transportation capacity on Granite is a reasonable choice. From one perspective, this appears a very simple question. Northern has already contractually committed to 18,000 MMBtus of peak gas supplies and merely needs an additional matching amount of Granite capacity to allow it to actually use the resources to which it has already committed. Northern states the total cost additional Granite capacity is \$194,075 or less than 1 percent of its total gas costs (capacity and commodity). See OPA 1-17. This cost is relatively modest.

On the other hand, Northern apparently did not make more than a token effort to consider the costs of alternatives. The only discussion of alternatives occurs in two responses to data requests. In the first, OPA 1-4, Northern develops a preliminary cost of completely replacing the Granite State system with new pipe. Northern concludes that this would be very expensive. Since there is no physical need to duplicate the facilities, it is hardly surprising to find that doing so is not economic. The second alternative, installing additional propane and/or LNG facilities, may be more realistic. However, Northern states that this option would require comprehensive study that it did not provide and presumably has not done. Thus, we have virtually no evidence on whether there are other reasonable alternatives to the Granite State purchase.³

³ One difficulty in reviewing affiliate contracts such as this is that it is difficult to determine whether the utility made a serious effort to consider alternatives. For example, in this case, as with most of its dealings with Granite, Northern was in a weak bargaining position due to the fact that all of its gas other than trucked propane or LNG must be delivered over the Granite system. If Granite were not an affiliate, one would expect Northern to put significant effort into developing alternatives to avoid complete reliance on Granite in order to strengthen its very weak bargaining position. We are disappointed that Northern's most serious effort to develop alternatives appears limited to costing out the relatively unlikely strategy of completely duplicating most or all of Granite's facilities.

C. Conclusion

Because this case involves only a relatively modest expenditure and because we are not perfectly confident that Northern will not need the additional 18,000 MMBtus of capacity, we will approve the contract. The consequences of disallowing the additional capacity were it ultimately needed, could be serious. However, we note that this request does a particularly good job of demonstrating the infirmities of the current cost-plus CGF approach to utility regulation. We continue to be interested in pursuing alternative forms of regulation or, more broadly, alternative forms of gas supply regulation. Perhaps a simpler alternative might be to set a market-based price for gas delivered to the Northern system. This price could be set administratively or, as the result of a competitive solicitation to multiple providers. We expect to pursue these ideas in future.

Dated at Augusta, Maine, this 21st day of December, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.